IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Tr.P(C).No. 206 of 2007()

MC.56/2006 of FAMILY COURT,TRIVANDRUM
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PETITIONER

RANGANANTHAN.M.,
S/O.MANIYAPPAN,KALLUNKAL VELI,
NORTH ARYAD, NETHAJI P.O.,
ALAPPUZHA DIST.

BY ADV. SRI.B.S.SIVAJI

RESPONDENTS:
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1. SANDHYA RANI. M.,
VADAKKEYATTATHU VEEDU
NADUVATHUCHERI, CHAVARA SOUTH P.O.,
KOLLAM DISTRICT.

2. PARVATHY, AGED 7 YEARS,
D/O.SANDHYA RANI,(MINOR REPRESENTED BY HER
MOTHER SANDHYA RANI,R1 RES.VADAKKEYATTATHU VEEDU
NADUVATHUCHERI, CHAVARA SOUTH P.O.
KOLLAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN
SRI.K.V.ANIL KUMAR
SMT.THARA THAMBAN
SRI.V.K.SATHYANATHAN

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2007, ALONG WITH TRPC 247/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.2401 OF 2007
IN
TR.P.C. NO.206 OF 2007

DISMISSED

27/11/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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Tr.P.C. NOs. 206 & 247 OF 2007

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Dated this the 27th day of November, 2007.

J U D G M E N T

Tr.P.C. 206/07 is filed by the husband for a transfer of the case MC 56/06 from the Family Court, Thiruvananthapuram to the Family Court, Kollam. The other transfer petition is filed by the wife and minor child for transfer of the case pending in Family Court, Kollam to the Family Court, Thiruvananthapuram. The unfortunate couple whose marriage had ended in divorce is now left with a disabled child and it is submitted by the wife that the girl is mentally retarded and is suffering from serious heart ailment which requires surgical interference and on account of the factum of poverty and lack of facilities, now the child had been put into a Balabhavan and she is trying earth and heaven to find out a way out for the treatment of the girl. It is also submitted by her that she is residing in

Balaramapuram in Thiruvananthapuram in connection with this purpose. It is also her case that the husband is not taking care to maintain them and financial stringency makes her life difficult. It is also submitted that the child requires constant attention and she cannot be left at the mercy of somebody else and therefore requests for a transfer of the case.

2. On the other hand, the husband would contend that he had made enquiries and found out that the child is not in the Balabhavan and it was the wife who had moved O.S. 395/06 before the Family Court, Kollam by making his parents also respondents who at the late evening of their life find it very difficult to travel and therefore his request is to transfer the case filed by the wife at Thiruvananthapuram to the Family Court, Kollam. Whatever it may be, in a case of this nature the Court has to consider more on the comparative hardships of the parties rather than to pin down the parties to technicalities. It is true that the Apex Court has held in ***Anindita Das v. Srijit Das (2006 (9) SCC 197)***

that women are exploiting the generosity shown to them and therefore each case has to be considered depending upon the facts and circumstances of that case.

3. Here is a wife who is divorced by the husband, living with a child who is mentally retarded and suffering from serious heart ailment. It is averred in the petition that she is staying in Thiruvananthapuram for the purpose of trying to find out a solution for treatment of the child. It is a known fact that when a heart surgery is to be undertaken it requires large expenditure and the amount of maintenance ordered is only Rs.1,000/- per month which may not be sufficient even to make both ends meet. Therefore, in a case of this nature where the mother is put with the responsibility of looking after a disabled child it is always desirable that the comparative hardship is found in her favour and therefore I hold that there are grounds to transfer O.S.395/06 pending before the Family Court, Kollam to the Family Court, Thiruvananthapuram where M.C.56/006 is pending consideration.

4. I make it clear that since it is a matter which requires evidence and has to be disposed of, Family Court shall not insist for the presence of the respondents on all hearing dates especially the parents, and if there are applications moved by them for exemption on genuine grounds it may be sympathetically considered. Further, considering the pathetic situation of the child, it is desirable that the Court give some priority to this case and try to dispose of the matter as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. The Family Court, Kollam is therefore directed to transfer O.S.395/06 pending before the said Court to the Family Court, Thiruvananthapuram for trial and disposal along with M.C.56/06.

The Tr.P.Cs. are disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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